

NEMCO DIGITAL | Terms & Conditions

1. Definitions and Interpretation

“**Action**” means a single agreed occurrence as specified on the Sales Order, Quote or Invoice;
“**Additional Charges**” means charges for additional Services not included in the Quote at the time the Agreement is formed;

“**Advertisement**” means an advertisement that appears on the Website including but not limited to Featured Provider Listings, Featured Provider Pages and Banners;

“**Agreement**” means an agreement formed between You and NEMCO DIGITAL comprising an Order, Order Form, Invoice or quote and these Terms;

“**Banners**” means banner advertisements delivered via the website;

“**Charges**” means NEMCO DIGITAL’ quoted charges set out in the Sales Order, Quote or Invoice or as varied pursuant to these Conditions together with any additional charges agreed between the Client and NEMCO DIGITAL from time to time;

“**Click**” means a visitor delivered to the Client’s website from a link in a paid search campaign;

“**Client**” means an end user who is utilising Services provided by NEMCO DIGITAL including all Services provided by outside agents, companies and organisations acting under instruction from or on behalf of NEMCO DIGITAL;

“**Conditions**” means the terms and conditions set out in this document and includes any Special Conditions;

“**Confidential Information**” means any and all information in whatever form whether disclosed orally or in writing (including any electronic or machine readable form) or in any other form including, without limitation, the form, materials and design of any relevant equipment or any part thereof, the methods of operation and the various applications thereof, processes, formulae, plans, strategies, data, knowhow, designs, photographs, drawings, specifications, technical literature and any other material made available by one Party to the other Party or gained by the visit by one Party to any establishment of the other Party whether before or after this Agreement is entered into, for the purpose of considering, advising in relation to or furthering the Purpose together with any information derived from such information;

“**Contract**” means a contract for the provision of the Specified Services;

“**Customer**” means an end user who is utilising Services provided by NEMCO DIGITAL including all Services provided by outside agents, companies and organisations acting under instruction from or on behalf of NEMCO DIGITAL;

“**Deliverables**” means the result of performing the Specified Services;

“**Design Services**” means the design or creative element of any Services offered by NEMCO DIGITAL. These Services include but are not limited to graphical design, copy writing, intellectual property and ideas, optimisation, consulting services, marketing materials, server and client side applications and all other Services or parts of Services which rely on the skill, knowledge or experience of NEMCO DIGITAL including all Services provided by outside agents, companies and organisations acting under instruction from or on behalf of NEMCO DIGITAL.

“**Effective Date**” means the date on which this Agreement is formed;

“**Featured Provider Pages**” means pages of advertorial about your services, your products or your company. The content of the Featured Provider Pages are prepared by NEMCO DIGITAL using Your Media or by yourselves and provided to NEMCO DIGITAL;

“**Featured Provider Listings**” – means an abbreviated summary of the content of the Featured Provider Page, which includes a link to the Featured Provider Page or to your

Website;

“**Fees**” means NEMCO DIGITAL charges from time to time for providing the Services;

“**Force Majeure Event**” means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“**Google Adwords Managed Campaign**” means a marketing campaign using paid search where the Client pays to Google the full cost of all Clicks purchased from keywords plus an agreed setup and monthly management fee to NEMCO DIGITAL;

“**Input Materials**” means any materials, data or other information provided by the Client in relation to the Specified Services; and you have the right or permission to use third party material. NEMCO DIGITAL will not be responsible for obtaining permission for third party material provided by you.

“**Intellectual Property Rights**” (“**IPRs**”) means any patent, patent application, know how, trade or service mark (whether registered or unregistered), trade or service mark application, trade name and logo, registered design, design right, copyright or other similar intellectual or industrial right;

“**Invoice**” means the document setting out the services that will be provided by NEMCO DIGITAL and the payments due;

“**Listing**” means a listing in an online directory or database;

“**Order**” means an order for Services placed by you on an Order Form or directly to NEMCO DIGITAL in writing, by email or by telephone;

“**Order Form**” means the record of the details of your Order;

“**Output Materials**” means any documents, manuals, data, materials or other information provided by NEMCO DIGITAL in relation to the Specified Services;

“**Paid Search Process Flow**” means the process commencing with a visitor from a link in a paid search campaign and ending with an Action in respect of a customer;

“**Pay per Action Campaign**” means a measured campaign where the Client agrees to pay NEMCO DIGITAL an agreed price for the occurrence of every Action;

“**Prohibited Content**” means:

(a) Pornographic or lewd material; (b) Material which breaches any applicable laws, regulations or legally binding codes, or infringes any third party Intellectual Property Rights or any other rights; (c) Material which is likely to cause annoyance, inconvenience or anxiety to another internet user;

“**Quote**” means the document setting out the Services that may be provided by NEMCO DIGITAL and the applicable estimated Fees;

“**Sales Order**” means NEMCO DIGITAL’ sales order form, Quote or Invoice setting out amongst other things the Client’s details and Specified Services requested and the cost of services to the customer;

“**Search Engine Optimisation**” means on- and off-site improvements to the Client’s website to make it more visible on agreed search engines (also referred to as “natural” or “organic” search);

“**Services**” means all services offered by NEMCO DIGITAL, including all Services and other services provided by outside agents, companies and organisations acting under instruction from or on behalf of NEMCO DIGITAL.

“**Special Conditions**” means any special conditions agreed by NEMCO DIGITAL and set out in the Sales Order;

“**Sponsored Content**” content provided by you including but not limited to artwork NEMCO DIGITAL’, informational, descriptions and text around which Advertisements will be reproduced;

“**NEMCO DIGITAL**” means The Service provider.

“**NEMCO DIGITAL Media**” means the media created by NEMCO DIGITAL using Your Media to create an Advertisement;

“**You**” and “**Your**” mean the customer/client.

“**Your Media**” means any documents, information, materials, images, graphics, logos, trademarks, domain names, contact details, patient testimonials, case studies and text provided by You to enable NEMCO DIGITAL to produce Advertisements, Featured Listings, Featured Pages, Listings and Sponsored Content as applicable. By providing such media you state that you have the right or permission to use third party material. NEMCO DIGITAL will not be responsible for obtaining permission to use third party material provided by you.

“**We**” and “**Our**” mean NEMCO DIGITAL.

2. **Your Status and Obligations**

2.1 By accepting our quote, invoice and making the payment you are accepting these Terms and you warrant that:

2.1.1 You are legally capable of entering into binding agreements;

2.1.2 You are accredited to provide the treatments and services detailed in your Advertisements, Your Media, and the Enquiry Form, in your Order and on the Order Form;

2.1.3 You shall provide the Treatments and Services with all skill, due care and diligence as would be expected from an accredited supplier of similar or identical Treatments and Services;

2.1.4 All Your Media that You provide to NEMCO DIGITAL shall be accurate and up to date and should, during the provision of the Services, Your Media no longer be accurate, You shall promptly inform NEMCO DIGITAL and provide new media that is accurate and up to date; and

2.2 You shall indemnify NEMCO DIGITAL and hold NEMCO DIGITAL harmless for any claims brought against NEMCO DIGITAL relating to your breach of clause

3. **Basis of Contract**

3.1 NEMCO DIGITAL shall provide and the Client shall purchase the Specified Services in accordance with the Sales Order, or any purchase order of the Client. These Terms and Conditions are deemed to be accepted by the customer, on full or part payment of Sales order. These Conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any such Sales Order is accepted or purported to be accepted, or any such purchase order is made or purported to be made, by the Client.

3.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of NEMCO DIGITAL and the Client.

3.3 NEMCO DIGITAL’ employees or agents are not authorised to make any representations concerning the Specified Services unless confirmed by NEMCO DIGITAL in Writing. In entering into the Contract, the Client acknowledges that it does not rely and has not relied on any such representations which are not so confirmed.

3.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by NEMCO DIGITAL shall be subject to correction without any liability on the part of NEMCO DIGITAL.

4. **Use of electronic mail**

The use of E-Mail shall be considered by both parties as constituting written communication between parties.

5. Order and Formation of Agreement

5.1 All Services are provided in accordance with these Terms and the Order Form ('Agreement').

5.2 You will place an Order for Services with NEMCO DIGITAL by:

5.2.1 Placing an Order with one of NEMCO DIGITAL employees, representatives or agents; or

5.2.2 NEMCO DIGITAL will send you an Order Form, Quote or invoice and a link to these terms and conditions on our website. You must check the details on the Order Form, Quote or invoice and read the terms and conditions and if you accept them and are willing to be bound by them, you should make the payment, by making the payment you are stating that you have read and accept these Terms and conditions.

5.3 You should read the Terms each time you place an Order and prior to making payment.

5.4 When you make the payment you are accepting the terms and you shall be bound by these Terms.

5.5 In the event that you would like to amend the details on the Order Form, You should mark up the amendments and return the Order Form, Quote, invoice to NEMCO DIGITAL. NEMCO DIGITAL will review the amendments, and will send you a revised Order Form, Quote, invoice to check. If you accept the content of the revised Order Form, Quote, invoice you should comply with the procedure set out at clause 3.3. For the avoidance of doubt, neither party shall be bound by these Terms until you have made the payment. Amendments made to an Order Form, Quote, invoice by you will constitute a counter offer. NEMCO DIGITAL shall not be obliged to accept your counter offer.

5.6 The Order Form, Quote, invoice will contain the effective dates for the commencement of the advertising or services provided by NEMCO DIGITAL.

5.7 The Agreement between NEMCO DIGITAL and You will relate only to the Services that have been confirmed in the Order Form, Quote or invoice.

5.8 The Services shall be provided for the period specified in the Order Form. If you wish to renew the Service You should contact NEMCO DIGITAL either in writing or by telephone. A new Order Form, Quote or invoice will be sent to you and on payment, pursuant to clause 5.5, services will be further renewed to You. The Terms applicable at that time will be sent to you with the Order Form, Quote or invoice.

6. Payment and Terms

6.1 Payment shall be made in Australian Dollars to NEMCO DIGITAL. We accept payment with cheques, major credit cards, debit cards or payment directly into our account set out in the quote or invoice. A deposit is required from any new client before any work is carried out.

6.2 It is the NEMCO DIGITAL' policy that any outstanding accounts for work carried out by NEMCO DIGITAL or its affiliates are required to be paid in full, no later than 7 days from the date of the invoice unless by prior arrangement with NEMCO DIGITAL. Once a deposit is paid and work completed you are obliged to pay the balance of payment in full. We will contact clients via email and telephone to remind them of such payments if they are not received when due.

6.3 If accounts are not settled or NEMCO DIGITAL have not been contacted regarding the delay, access to the related website may be denied and web pages removed, we will then pursue payment, non-payment can result in court judgements being added to the client's credit rating.

6.4 Following consistent non-payment of an invoice, our Solicitors will contact the client in question, with a view to taking the matter further and if need be to seek payment through legal procedures, and if necessary court summons.

6.5 Payments are due upon provision or renewal of Services. Credit terms are offered at the

discretion of NEMCO DIGITAL and Customers eligible for credit shall be notified before Services are provided. Services provided without agreed credit terms are due for payment on provision and payment must reach NEMCO DIGITAL no more than five (5) working days from receipt of Quote or invoice unless otherwise indicated either in writing or on the quote or invoice.

6.6 All credit terms or lack thereof are at the sole discretion of NEMCO DIGITAL who reserves the right to restrict the availability of credit terms to Customer. If due to bank charges, transfer fees, or the like, NEMCO DIGITAL should receive less than its invoice amount, NEMCO DIGITAL will re-invoice Customer for the shortfall. In the event that any account remains unpaid fourteen (14) days after presentation of invoice or (if credit terms have been agreed between the parties) fourteen (14) days after the invoice due date, NEMCO DIGITAL may discontinue, withhold or suspend services to Customer and/or its customer(s) to whom such unpaid amounts relate.

6.7 NEMCO DIGITAL will not and cannot be held liable for loss of business, revenue or goodwill resulting from the suspension, withholding or discontinuation of and Services due to unpaid accounts. No guarantee, written or implied, will be considered to be in force; until such time that the full payment has been received by NEMCO DIGITAL for the provision of such Services.

6.8 If the Service You require involves the provision of Advertisements, Listings or Sponsored Content, due to the bespoke nature of such Services Your right to cancel will be restricted to 48 hours for Advertisements and Listings and 7 working days for Sponsored Content from the date of the Order Form Quote or invoice being returned to NEMCO DIGITAL by You. Your cancellation of such Service must be communicated to NEMCO DIGITAL in writing.

6.9 If NEMCO DIGITAL has received notice of your cancellation of the Advertisements, Listings or Sponsored Content Service in accordance with clause 4.7, NEMCO DIGITAL shall reimburse you for any payment received relating specifically to the cancelled Service and that Service only.

6.10 From time to time NEMCO DIGITAL may run promotions and offers (**'Promotions'**) in respect of some selected Services. These Promotions shall be detailed on the Websites from time to time and, where you have given NEMCO DIGITAL permission, may be communicated to you by email, telephone or fax. These Terms, together with any additional terms that are detailed with the Promotions shall apply. Orders for the Promotions Services shall be placed by you and supplied by NEMCO DIGITAL in accordance with these Terms, unless stated otherwise. Such variation to these Terms shall be communicated to you with the Order Form Quote or invoice and you shall be required to indicate your acceptance, in accordance with clause 3.

6.11 The Fees are subject to GST (or other similar or applicable sales taxes, charges, duties or levies) at the prevailing rate.

6.12 All payments are non-refundable upon receipt. No exceptions will be made. We will not negotiate charge backs with any person or company. Our Refund policies are clearly stated above, and all clients are asked to read and agree to our terms of service prior to the start of any project.

7. Website Design

7.1 Whilst every endeavour will be made to ensure that the website and any scripts or programs are free of errors, NEMCO DIGITAL cannot accept responsibility for any losses incurred due to malfunction, the website or any part of it.

7.2 The website, graphics and any programming code remain the property of NEMCO DIGITAL until all outstanding accounts are paid in full.

7.3 Any scripts, cgi applications, php scripts, or software (unless specifically agreed) written by NEMCO DIGITAL remain the copyright of NEMCO DIGITAL and may only be commercially reproduced or resold with the permission of NEMCO DIGITAL. NEMCO DIGITAL reserves the right to refuse any material of a copyrighted nature unless adequate proof is given of permission to use such material.

7.4 Any additions to the brief will be carried out at the discretion of NEMCO DIGITAL and where no charge is made by NEMCO DIGITAL for such additions, NEMCO DIGITAL accept no responsibility to ensure such additions are error free and reserve the right to charge an according amount for any correction to these or further additions.

7.5 The client agrees to make available as soon as is reasonably possible to NEMCO DIGITAL all materials required to complete the site to the agreed standard and within the set deadline.

7.6 NEMCO DIGITAL will not be liable for costs incurred, compensation or loss of earnings due to the failure to meet agreed deadlines.

7.7 NEMCO DIGITAL will not be liable or become involved in any disputes between the site owner and their clients and cannot be held responsible for any wrongdoing on the part of a site owner.

7.8 NEMCO DIGITAL will not be liable for any costs incurred, compensation or loss of earnings due to the work carried out on behalf of the client or any of the clients appointed agents.

7.9 NEMCO DIGITAL will not be liable for any costs incurred, compensation or loss of earnings due to the unavailability of the site, its servers, software or any material provided by its agents.

7.10 A revision is a minor change request, such as changing a font, pattern, or colours.

A major change such as requesting a different layout than the one you originally selected, will be charged at an hourly rate of \$85/hour.

Typically, up to 3 rounds of revisions are included free with every design. (We value our customer relationship, and this value is not a hard and fast rule, but it is at our discretion.) Once the graphics design of a website has been approved, any further design changes will incur a fee of our standard hourly rate.

Once a design has been approved and installed on the client's site, the design is considered approved and completed. Any additional design changes requested after installation will incur a fee of our standard hourly rate. We welcome ongoing requests for improvements.

7.11 Responsive Themes for Smart-phones and Mobile Devices– This feature is where the page contents will expand and shrink to fit the width of the screen. In some cases sidebar regions will move down the bottom of the page, making more room for content display in a narrow screen. If this is a requirement, NEMCO DIGITAL must be informed before payment for the web design is made. Custom design of responsive websites may incur extra charges. No guarantee can be given that the responsive theme will work correctly on all devices, as not all manufactures comply with the same Internet protocols.

7.12 Once a website has been designed and completed the final balance of payment is then due in accordance with our payment terms. There are no exceptions to this, i.e. if the client decides they no longer want the site, as they have commissioned the work and paid a deposit they are still obliged to pay for the work that has been done. Non-payment will result in legal action being taken if necessary.

7.13 Content of Websites

13.1 All services provided by NEMCO DIGITAL may only be used for lawful purposes. Use of our services to infringe upon any copyright or trademark is prohibited. This includes but is not limited to unauthorized copying of music, books, photographs, or any other copyrighted work. The offer of sale of any counterfeit merchandise of a trademark holder will result in the immediate termination of your account. Any account found to be in violation of another's copyright will be expeditiously removed, or access to the material disabled. Any account found to be in repeated violation of copyright laws will be suspended and/or terminated from our hosting.

13.2 NEMCO DIGITAL reserve the right to refuse service to anyone. Any material that, in our judgment, is obscene, threatening, illegal, or violates our terms of service in any manner may be removed from our servers (or otherwise disabled), with or without notice.

13.3 Failure to respond to email from our abuse department within 48 hours may result in the suspension or termination of your services. All abuse issues must be dealt with via trouble ticket/email and will have a response within 48 hours.

13.4 NEMCO DIGITAL is not in a position to investigate and validate or invalidate the veracity of individual defamation claims, which is why we rely on the legal system and courts to determine whether or not material is indeed considered defamatory. In any case in which a court order indicates material is defamatory, libelous, or slanderous in nature; we will disable access to the material.

13.5 Nemco Marketing Solution, being a web design and webhosting service, is a republishers and not the publisher of content. Our service merely provides a hosting platform and space on which to host content, and any creation or publication of content on our services is the sole responsibility of the third-party user which creates or publishes the content. Therefore, NEMCO DIGITAL cannot be held liable for any allegedly defamatory, offensive or harassing content published on sites hosted under NEMCO DIGITAL.

13.6 Violations will be reported to the appropriate law enforcement agency.

13.7 It is required that you use a secure password should you require a content editing backend. If a weak password is used, your account may be suspended until you agree to use a more secure password. Audits may be done to prevent weak passwords from being used. If an audit is performed, and your password is found to be weak, we will notify you and allow time for you to change/update your password.

8. Search Engine Optimisation

8.1 Prior to work being undertaken by NEMCO DIGITAL, we require assurances from the client stating that the customer has not employed the services of any Search Engine Optimisation Company other than NEMCO DIGITAL to work on their website promotion. The customer must also have not employed the services of any Submission Company during the same period of NEMCO DIGITAL providing their search engine optimisation services.

8.2 We provide a search engine optimisation service for any client utilising our bespoke design services. Although Google's results are displayed on other search engines, the work that is carried out by NEMCO DIGITAL is solely aimed at increasing visibility and boosting

ranking on Google. It is not possible to give a 100% guarantee for any specific result on any search engine, nor can NEMCO DIGITAL quantify the level of increased traffic or sales. Due to the competitiveness of some keywords/phrases, ongoing changes in search engine ranking algorithms and other competitive factors, it is not possible to give a 100% guarantee for any specific result on any search engine, nor can we quantify the level of increased traffic or return on investment, as a result of the SEO campaign.

8.3 The client understands that search engines are independent companies who select and rank sites using their own criteria and no guarantees will be given as to a client's site position in the search engines as the search engines change their ranking algorithms on a regular basis. Additionally, both new sites and competitor sites may be being optimised and submitted every day. The best way to ensure that you maintain your rankings is to arrange a maintenance contract with NEMCO DIGITAL. NEMCO DIGITAL cannot guarantee customer's site ranking at any time.

8.4 All SEO contracts have a minimum term of three (3) months followed by a three (3) months' notice period to cancel the contract.

8.5 The Client grants authority to NEMCO DIGITAL to submit the web site pages being promoted to search engines and directories.

8.6 The customer has not created any duplicate sites, duplicate content or pages, redirects or doorway pages to their website whilst advertising online with NEMCO DIGITAL.

8.7 The customer has not requested or exchanged links with any link farms or undertaken any spamming techniques which may harm the web sites search engine ranking with Google.

8.8 NEMCO DIGITAL hold a strict privacy policy and promise to never divulge your details to any other client, existing or potential.

9. Google Adwords Managed Campaign

9.1 NEMCO DIGITAL manages advertising for customers on the Google Adwords platform and other Advertising platforms, however are not affiliated with Google or any other Advertising Platforms and do not make guarantees related to the results of this advertising. You will be required to pay a monthly service fee to NEMCO DIGITAL and a monthly fee to Google AdWords.

9.2 At the end of each month, the customer will have to make two (2) payments – one to NEMCO DIGITAL and one to Google AdWords. The client is responsible for pay per click charges levied by Google.

9.3 The customer will be required to pay an up-front fee for the setup of their account to NEMCO DIGITAL. All set-up fees are non-refundable once set-up has been completed. The subscriber is responsible for providing up-to-date payment information to Google NEMCO DIGITAL will not be held responsible. The Customer is required to Accept Google Adwords Terms & Conditions prior to commencing services with NEMCO DIGITAL. These can be read here: <https://adwords.google.com/select/tsandcsfinder>.

9.4 You agree that NEMCO DIGITAL Consultant can monitor your account after cancellation or expiry of agreement to make sure you are not using any tools, coding, new keywords and any knowledge gained for the financial benefit of another third party. If another party takes over your account management NEMCO DIGITAL reserves the right to remove any unique techniques, key words and ad styles implemented in our account structure at the set up stage Throughout the duration of the contract you agree that any tools, coding, new keywords and any knowledge gained cannot be used in any other Google Adwords Account you may have, or create yourselves during the Term of this contract.

10. Advertising on Websites and Listings

10.1 In the event that NEMCO DIGITAL is to produce Media and publish it on a Website as a Listing or Advertisement the Service shall be provided as follows:

10.2 You shall follow the Order procedure as set out at clause 5;

10.3 NEMCO DIGITAL shall prepare the Listing or Advertisement in accordance with the Order Form Quote or invoice;

10.4 NEMCO DIGITAL shall send You a copy of the proposed Listing or Advertisement where you may view the proposed Listing or Advertisement;

10.5 Within five working days of receipt of the proposed Listing or Advertisement You shall revert to NEMCO DIGITAL with your comments and any amendments You require;

10.6 As far as is reasonably practicable, NEMCO DIGITAL shall make the amendments to the Listing or Advertisement that You require;

10.7 You shall indicate your acceptance of the Listing or Advertisement by email or telephone

10.8 NEMCO DIGITAL may at any time, without notifying you, make changes to the Services, which are necessary to comply with any applicable statutory requirements, or which do not materially affect the nature or quality of the Service.

10.9 Whilst NEMCO DIGITAL will make reasonable efforts to accurately reproduce as necessary the trading colours of your trademarks and logos in NEMCO DIGITAL Media and Advertisements, no assurances or warranties shall be inferred into this Agreement that they will be reproduced exactly.

10.10 For the avoidance of doubt, in the event that NEMCO DIGITAL and You enter into an Agreement for Services, whereby NEMCO DIGITAL shall place links to your website on NEMCO DIGITAL' Websites, NEMCO DIGITAL hereby expressly states that it shall bear no responsibility for the content of your websites. You hereby agree, that You shall indemnify NEMCO DIGITAL for all and any damage caused to NEMCO DIGITAL due to the content of your websites.

11. Domain Name Registrations

11.1 NEMCO DIGITAL will, on request, acquire an Internet Domain Name on behalf of the Customer once full payment, including full relevant registration authority fees, has been received by NEMCO DIGITAL.

11.2 Any costs incurred by NEMCO DIGITAL for the registration and renewal of any such domain shall be reimbursed to NEMCO DIGITAL upon invoice from NEMCO DIGITAL to Customer, within five days of receipt. A Domain shall be deemed to have been registered on notification in writing from NEMCO DIGITAL to Customer.

11.3 Any action taken by you before such notification is at your own risk.

11.4 Domain names will only be registered once payment in full has been received unless prior arrangements have been made.

11.5 Domain names should be at least 3 letters in length.

11.6 You shall have to right to bring any claim against us in respect of refusal to register a domain name.

11.7 When a domain name is due for renewal we will inform you in advance so you can make arrangements for payment; renewals shall not be actioned until we receive payment in full, unless prior arrangements have been made.

11.8 We accept no responsibility for non-payment renewals and the consequential loss of the domain name.

11.9 Domain names renewals are non-refundable once renewal has been accepted and the domain name has been renewed.

12. Transfer of Website Domain Names

12.1 The Customer shall be responsible for any costs and expenses incurred by NEMCO DIGITAL in respect of the relocation of the Website or Domain Name(s) to a third party or to the server of a third party (as the case may be) or the transfer of the Domain Name(s) to a new registrar of the Domain Name(s) (with or without a change in the ownership of the Domain Name(s)). NEMCO DIGITAL shall levy a minimum administration fee of \$175.00 in respect of the costs incurred in assisting in such a change of ownership or transfer.

12.2 NEMCO DIGITAL shall be entitled to refuse to relocate or transfer such Website or Domain Name(s) unless such costs and expenses and all other Charges due under this Agreement have been paid in full by the Customer. NEMCO DIGITAL accepts no responsibility for the Website and any issues surrounding the Website and this Agreement shall be terminated automatically on such transfer, in respect of that particular Service provided by the Customer, but for the avoidance of doubt this Agreement shall continue in respect of all other Services, which remain to be provided by NEMCO DIGITAL to the Customer.

12.3 NEMCO DIGITAL accepts no responsibility for and shall not be liable for any interruption of or loss of any of the Services, arising as a result of any transfer effected by NEMCO DIGITAL

12.4 Domain names transfers are non-refundable once payment has been taken and the transfer has been processed by NEMCO DIGITAL.

12.5 NEMCO DIGITAL reserve the right to charge an administrative fee if after expiration a second transfer email is required by the customer.

13. Hosting

13.1 We use some of Australia's leading hosting providers. By selecting only the most reputable providers, NEMCO DIGITAL may ensure maximum uptime and continued reliable service to our clients. However, no guarantee of service can be made by NEMCO DIGITAL on behalf of the host. NEMCO DIGITAL will remain your point of contact for any issues you have with the service (if requested) and will do everything in its power to resolve problems as swiftly and professionally as possible.

13.2 The hosting renewal charge must be received within 30 days of the hosting expiry date. We reserve the right to deactivate any website where the hosting has expired and where hosting is included in the monthly maintenance contract. Non-payment of maintenance fees will result in deactivation of the website after 15 days of the final demand letter for non-payment of fees.

13.3 There will be an admin fee set by NEMCO DIGITAL for reactivating the website/hosting.

13.4 We do not provide the client or any third party with FTP, database or SSH server access to any of our hosting accounts, however we will provide copies of any HTML files and SQL data dumps to clients or third party providers upon client approval and settlement of any outstanding invoices.

14. Intellectual Property Rights

14.1 Subject to clause 14.3, all Intellectual Property Rights used or subsisting in or in connection with the Specified Services and with respect of all Output Materials and Deliverables are owned and will be the sole property of the NEMCO DIGITAL. The Client will not during or at any time after the completion, expiry or termination of this Agreement in any way question or dispute the ownership by NEMCO DIGITAL thereof. The Client shall, subject to payment in full of all Charges on the due dates for payment and compliance with the other terms and conditions of the Contract, benefit from a non-exclusive licence granted to it by NEMCO DIGITAL for the use of the NEMCO DIGITAL' Intellectual Property Rights

in the Output Materials and deliverables only.

14.2 The Client undertakes not to use, re-use or recreate the content or other material relating to the Output Materials or the Deliverables or the Intellectual Property Rights relating thereto, all of which belong to or have vested in the NEMCO DIGITAL.

14.3 All Intellectual Property Rights in any Input Materials shall belong to the Client and the Client hereby grants to NEMCO DIGITAL a non-exclusive licence to use all Intellectual Property Rights in such Input Materials.

14.4 The Client warrants that it owns all Input Materials or has a valid and subsisting licence to use such Input Materials and the use by NEMCO DIGITAL of the Input Materials for the purpose of providing the Specified Services will not infringe the Intellectual Property Rights or any other rights of any third party. The Client shall indemnify NEMCO DIGITAL against any losses, damages, costs, expenses or other claims arising from any such infringement or breach of this clause.

14.5 The Client will indemnify NEMCO DIGITAL on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the use or possession of the Input Materials or the provision of the Specified Services in accordance with the Client's specifications infringes the Intellectual Property Rights or any other rights of any third party.

15. Confidentiality

15.1 Both during the Contract and after its termination, the parties shall treat as confidential (and shall procure that the personnel of each of them treat as confidential) and shall not (and shall procure that the personnel of each of them does not) other than in the proper provision of the Specified Services, use or disclose to any person, firm or NEMCO DIGITAL, any Confidential Information belonging to the other party or its clients or suppliers, nor permit its use or disclosure.

15.2 The provisions of clause 15.1 shall not apply where Confidential Information is divulged to:

15.2.1 Either party's own employees and then only to those employees who need to know the same;

15.2.2 Either party's auditors, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right, duty or obligation to know the business of the other party and then only in pursuance of such right, duty or obligation.

15.3 Both parties undertake to ensure that persons and bodies referred to in clause 15.2 are made aware before the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the other party.

15.4 Each party shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information and shall give the other party all reasonable assistance in connection with any proceedings, which the other party may institute against such person for breach of confidence.

15.5 NEMCO DIGITAL will not reveal the details of any contractors, employees or external representatives and no contact between such parties and the client can occur unless with the permission of NEMCO DIGITAL.

15.6 The provisions of this clause shall survive the termination of the Contract but the restrictions contained in clause 15.1 shall cease to apply to any information which may come into the public domain otherwise than through unauthorised disclosure.

16. Term and Termination

16.1 The Contract shall commence on the date of acceptance of the Sales Order by NEMCO DIGITAL (which date shall be notified by NEMCO DIGITAL to the Client) and continue, subject to clause 16.3, until either party gives to the other 1 months' notice (or 3 months in the case of SEO services see clause 8.4) in Writing to terminate the Contract, provided that this notice is served after the agreed minimum term of contract with such notice to expire at the expiry of the Term.

16.2 In the event no notice is given in accordance with clause 16.1, the Contract shall continue for a subsequent period equal to the Term until either party gives to the other 1 months' notice in writing to terminate the Contract, such notice to expire on any anniversary date of the date of the Contract.

16.3 Either party shall be entitled to terminate the Contract forthwith at any time in Writing to the other party if:

16.3.1 The other party commits a material breach of any of the terms of the Contract including these Conditions and (if the breach is capable of remedy) fails to remedy the breach within 30 days after receipt of notice in Writing to do so; or 16.3.the other party becomes subject to an administration order; a receiver or administrative receiver or similar is appointed over, or an encumbrance takes possession of any of the other party's property or assets; the other party enters into an arrangement or composition with its creditors, ceases or threatens to cease to carry on business, goes into liquidation or bankruptcy, becomes insolvent, or ceases to be able to pay its debts as they fall due.

17. Termination Consequences

17.1 Forthwith upon the termination of the Contract for any reason whatsoever:

17.1.2 The Client shall pay all sums then owing to NEMCO DIGITAL in respect of invoices already issued by NEMCO DIGITAL;

17.1.3 The Client shall return to NEMCO DIGITAL any Confidential Information belonging to NEMCO DIGITAL and all copies of the whole or any part thereof or, if requested by NEMCO DIGITAL, shall destroy the same and certify in Writing to NEMCO DIGITAL that it has been destroyed.

17.2 In the event of the termination of the Contract for any reason other than the expiry of the Term or a lawful termination of the Contract by the Client pursuant to the provisions set out in clause 16.3. NEMCO DIGITAL shall be entitled forthwith to issue to the Client an invoice in respect of 25% of the total Charges which would have been payable in respect of the Contract during the Term (on the assumption that such termination had not occurred) and the Client shall pay such invoice forthwith upon receipt.

18. Warranties and Liabilities

18.1 Subject to the clauses 18.2 to 18.7 NEMCO DIGITAL warrants that:

18.1.1 In providing the Specified Services NEMCO DIGITAL shall use all reasonable skill and care; and

18.1.2 The Deliverables will materially correspond with their specification in the sales order at the time of delivery

18.2. NEMCO DIGITAL shall not be liable for any losses, damages, costs, expenses, injuries or other claims of any nature whatsoever caused by or arising from:

18.2.1 any Input Material, information or instructions supplied by the Client being incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form

18.2.2 Any act or omission of the Client, any personnel of the Client, or any other body or person contracted to the Client in respect of the Specified Services;

18.2.3 Any failure by the Client to comply with any legal or statutory obligations or regulations;

18.2.4 Any act or omission of any third party personnel, or any other body or person.

18.3 NEMCO DIGITAL shall not be liable for any claims arising out of the provision of the Specified Services insofar as the same arose as a result of any infringement of copyright arising from the Input Materials supplied by the Client to NEMCO DIGITAL used to provide the Specified Services.

18.4 Any guaranteed minimum in respect of the Deliverables as contained in the Sales Order is, other than as set out in this clause, for guidance only provided that;

18.4.1 In the event that there is a 20% shortfall of the Deliverables delivered by NEMCO DIGITAL as against any guaranteed minimum in any agreed time period, the Client and NEMCO DIGITAL shall co-operate together to attempt to resolve the matter.

18.4.2 Subject to clause 16.1 and subject to compliance of these Conditions by the Client in the event that there is a 40% shortfall of the Deliverables delivered by NEMCO DIGITAL as against any guaranteed minimum in any agreed time period, the Client shall be entitled to terminate the Contract in Writing to NEMCO DIGITAL

18.5 NEMCO DIGITAL' liability whether arising under contract, misrepresentation, mis-statement, any tortious act or omission including negligence, infringement of Intellectual Property Rights or otherwise, arising from or in connection with the supply of the Specified Services, the Output Materials or the Deliverables or their use by the Client shall be limited to the Charges payable by the Client for the work detailed in the quote form.

18.6 NEMCO DIGITAL shall not be liable to the Client whether under contract, misrepresentation, mis-statement, any tortious act or omission including negligence, infringement of intellectual property rights or otherwise, for any indirect, special or consequential loss or damage (including loss of profit, business contracts, revenues or damage to the Client's reputation or goodwill) which arise out of or in connection with the supply of the Specified Services, the Output Materials or the Deliverables or their use by the Client.

18.7 NEMCO DIGITAL shall not be responsible for URLs dropped or excluded by a search engine for any reason.

18.7.1 NEMCO DIGITAL shall not be responsible for delays or failure of performance resulting from Internet Service Provider delivery problems or failure, or any communication or delivery problems associated with Client's receipt of the Account Service data.

18.7.2 NEMCO DIGITAL shall not be responsible for acts or causes beyond their control, including but not limited to: acts of God, strikes, lockouts, communications line or equipment failures, power failures, earthquakes, or other disasters.

18.7.3 NEMCO DIGITAL do not represent or warrant that Customers' URLs will achieve a favourable position, or any position, within a particular search engine.

18.7.4 NEMCO DIGITAL do not warrant or represent that the use or the results of the use of the materials available through NEMCO DIGITAL Services or from third parties will be correct, accurate, timely, reliable or otherwise.

18.7.5 You expressly agree that use of NEMCO DIGITAL Services provided hereunder is at your sole risk. These Services are provided on an "as is" and "as available" basis. NEMCO DIGITAL expressly disclaim all warranties of any kind, express or implied, including without limitation any warranty of merchantability, fitness for a particular purpose or non-infringement.

18.7.6 Notwithstanding the security precautions taken against disclosure of information, there are certain conditions that exist on the Internet generally which are outside NEMCO DIGITAL' control and could result in a breach of security. Accordingly, NEMCO DIGITAL cannot guarantee that Your Account Service data information will be free from corruption or piracy. You hereby expressly waive any claim against NEMCO DIGITAL arising out of the loss of data through corruption, piracy, and breach of security or for any other reason that is not based on intentional actions of NEMCO DIGITAL.

18.7.7 Your use of NEMCO DIGITAL services is at your sole risk. Our backup service typically runs once a week, overwrites any of our previous backups made, and only one week of backups are kept. This service is provided to you as a courtesy. NEMCO DIGITAL is not responsible for files and/or data residing on your account. Please make arrangements with us if you need off-site backup, and more frequently. This will incur a cost.

18.7.7 To the maximum extent allowed by law, NEMCO DIGITAL and any of their parents, members, subsidiaries, affiliates, service providers, licensors, officers, directors or employees shall not be liable for any direct, indirect, special, incidental or consequential damages (no matter how they arose, including negligence), or for interrupted communications, lost data or lost profits, arising out of or in connection with the Services provided hereunder. Further, NEMCO DIGITAL will not have any liability for any losses arising because NEMCO DIGITAL Services are not operational or accessible. This section does not limit liability for bodily injury of a person.

19. General

19.1 NEMCO DIGITAL shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the NEMCO DIGITAL' obligations in relation to the Specified Services, if the delay or failure was due to any cause beyond the NEMCO DIGITAL' reasonable control.

19.2 The Client shall not be entitled to assign any of its rights or obligations under the Contract or these Conditions without the prior consent in Writing of the NEMCO DIGITAL.

19.3 The Contract and these Conditions contain the whole agreement between the parties and supersedes all previous agreements.

19.4 No failure or delay by NEMCO DIGITAL in exercising any right, power or privilege under the Contract or these Conditions shall operate as a waiver thereof or prejudice any other or further exercise by NEMCO DIGITAL of any of its rights or remedies under the Contract or these Conditions.

19.4.1 The rights and remedies in the Conditions are cumulative and not exclusive of any right or remedies provided by law.

19.5 The Conditions shall not be varied except with the NEMCO DIGITAL' prior consent in Writing.

19.5.1 A notice required or permitted to be given by either party to the other under these Conditions shall be in Writing or by e-mail addressed to the other party at its registered office or principal place of business or such other address as may at the relevant at the time have been notified pursuant to this provision to the party giving the notice

19.6 Variation of Agreement- NEMCO DIGITAL may from time to time vary the terms, charges and conditions outlined in this agreement. The version of this agreement that is published at www.nemco.com.au/terms should always be taken as the binding and most recent version of these terms of agreement.

19.7 NEMCO DIGITAL reserves the right to restrict, suspend or terminate access to all or any part of the Service if you fail to comply with your obligations as defined within these terms and conditions.

19.8 If any provision of the Contract or these Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidances, void ability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract or these Conditions and the remainder of such provision shall continue in full force and effect.

19.9 The Contract and these Conditions shall be construed in accordance with the Laws of New South Wales and the parties submit to the exclusive jurisdiction of the Australian Courts.